

2008 Tribal/State Transportation Conference

Tribal Conference Report



WASHINGTON
Traffic Safety
COMMISSION



NORTHWEST TRIBAL TECHNICAL
ASSISTANCE PROGRAM
Tribal Transportation Training
& Technical Assistance
EASTERN WASHINGTON UNIVERSITY
URBAN & REGIONAL PLANNING PROGRAM



Washington State
Department of Transportation



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Summary

The 2008 Tribal / State Transportation Conference was held at the Sleeping Lady in Leavenworth Washington and was co-hosted by the Confederated Tribes of Colville.

The Conference was a success by many standards: over 130 people attended, representing 17 tribes:

**Colville
Cowlitz
Kalispel
Lower Elwha
Lummi
Nisqually
Nooksack
Puyallup
Quinault**

**Samish
Shoalwater Bay
Spokane
Squaxin Island
Stillaguamish
Swinomish
Tulalip
Yakama**

Other participants represented the American Red Cross, Bureau of Indian Affairs, Department of Archaeology and Historic Preservation, Eastern Washington University, Federal Highway Administration, FHWA-Western Federal Lands, Federal Transit Administration, Governor's Office of Indian Affairs, Northwest Tribal Technical Assistance Program, Oregon Department of Transportation, NW WA Indian Health Board, Puget Sound Regional Council, Tri-County Economic Development, US Dept. of Labor, WA State House of Representatives, WA State Senate, WA State Transportation Commission, WA State Apprenticeship Council, WA State Patrol, Washington Traffic Safety Commission, WH Pacific, Iron Workers PNW District, Iron Workers Local #86, People for People, Jones and Jones, Womer and Associates, Inc.

Distinguished state leaders including Senator Claudia Kauffman, Representative John McCoy and Representative Sam Hunt joined us throughout the week to discuss past and upcoming tribal issues in the Washington State Legislature.

The Conference also offered a number of training opportunities: Making Safer Roads; Transit Programs and Funding; US Hwy 93 Scenic Byways Projects on the Flathead Reservation; the WSDOT Tribal Consultation Model for NEPA. The Tribal Transportation Planning Organization

held their quarterly meeting on Monday afternoon. These sessions were well attended and will improve both technical skills and general understanding in each of the areas.

Thanks to the generous support of the Federal Highway Administration, Kalispel Tribe of Indians, Northwest Tribal Technical Assistance Program and the Washington Traffic Safety Commission, we were able provide 18 scholarships to participants who otherwise would not have been able to attend due to budget struggles.

In keeping with the tradition of this conference, participants wasted no time in getting to work! The Conference was organized into three tracks: Cultural Resources, Planning and Workforce Development. The participants were engaged and respectful. Each track was a good balance between tribal, state and other agency participants. The following track reports include discussion summaries and action items from each of the break out sessions. The next conference will be in the fall of 2010 in the WSDOT Northwest Region!

A special thanks to Smoker Marchand (Colville) for the use of his artwork.



Workforce Development Track Report/Session Notes

Co-chairs: John Bastian (Quinault) and Marvin Jenkins (WSDOT)

Track Discussion Summary

Tuesday, October 28, 2008

United States Dept. of Labor Workforce Development

Anne Wetmore (Regional USDOL) and Melinda Nichols (Washington State Apprenticeship Council) discussed USDOL Funding Opportunities, President's Community Based Job Training Grant, Yakama Nation Electrical Apprenticeship, WA State Apprenticeship and Training Council Reciprocal Agreement and Tribal Subcommittee.

Washington State department of Transportation Apprenticeship Utilization Program

Linea Laird and Dave Jones discussed the implementation of apprenticeship utilization on state funded WSDOT projects, and the difference between WSDOT's federally and state fund projects.

WSDOT On The Job Training Supportive Services Program

Marvin Jenkins described the OJTSS Program: how it works; the type of services provided to contractors; apprenticeship programs; and applicants interested in entering an apprenticeship training program, to acquire entry level skill training.

(TERO 101) Tribal Employment Rights Ordinance

John Bastian (Quinault Nation) and Kelsey Packineau (Yakama Nation) provided thoughts on the historical and cultural difference between their tribes and described how TERO Ordinances vary from tribe to tribe. Mr. Packineau talked about the partnership with the Associated General Contractors and the success they had educating high school students about the construction trades with the "If I had a Hammer Project".

Action Items

- Continue discussions on the best way to develop / maintain good working relationships between tribal representatives and WSDOT. For example, WSDOT could attend or piggy-back meetings at the quarterly Pacific NW TERO meetings.
- Clarify roles and responsibilities; discuss needs and expectations

(of tribes and WSDOT).

- Tribes would like to receive contract information specific to their areas, rather than all contracts.
- Develop a master contacts list of TERO representatives for contractors.
- Teleconference as appropriate so people with budget constraints can still participate.

Planning Track Conference Report / Session Notes

Co-Chairs: Brian Clark (Colville), Kirk Vinish (Lummi) and Megan Nicodemus (WSDOT)

Summary and Action Items

- SAFETEA-LU will expire in September of 2009. To prepare for reauthorization, an IRR formula workgroup will be assembled to identify changes to the IRR formula and work to solidify the WA tribes' position:
- Kirk Vinish (Lummi) will lead the group. Volunteers will include Brian Clark, Liz Mares, Lynn Drake, Jim Longley, Kim Stube, Keri Shepherd.
- The first meeting will be in November 2008. Kirk will send out an email invite.
- Add a discussion of the IRR inventory formula and other recommendations to the agenda for the January 2009 meeting agenda. Keep placing these items on the TTPO agenda until reauthorization.
- After the IRR inventory formula workgroup has developed recommendations, the TTPO Officers draft a letter to tribal council chairs and WSDOT Secretary of Transportation. The first draft of the letter will be sent to the IRR inventory formula workgroup for review. The letter will be finalized at the January 2009 TTPO meeting.
- TTPO will consider a tribal transit best practices list. Discussion of this will begin at the January 2009 TTPO meeting.
- The TTPO will continue to request that tribes share reservation road maps with WSDOT's Traffic Data Office to begin developing good crash data.
- Request that WSDOT organize a Tribal/State Conference planning committee soon after this conference is over.
- Request WTSC to make "eTrip" available to all WA tribes.
- Work on clarifying the statewide STIP process. Tribal information will continue to be included in the tribal transportation guidebook.

Track Discussion Summary

Tuesday, October 28, 2008

Tribal Safety Partnerships Best Practices Panel

Brian Clark (Colville), Kirk Vinish (Lummi), William Petersen (Kalispel)

- Traffic safety continues to be a high priority issue for tribes due to the consistently higher rates of traffic fatalities that occur in Indian Country. Tribes should do the following:
 - Pursue more funding for traffic safety initiatives in Indian Country that can support existing efforts and fund new programs. Funding should provide adequate staffing.
 - Clarify jurisdictional confusion between police and agencies and nurture partnerships.
 - Update the traffic sections in your Tribal Code. Make sure they are clear.
 - Conduct community education sessions and other outreach about the causes and prevention of traffic fatalities.
 - Finance tribal traffic safety studies through IRR program.
 - Consider tribal traffic safety when creating projects for TIPs.
 - Address communication equipment compatibility issues with local agencies.
- Tribes should work towards instituting their own safety certification programs that align with the state and local agency certification standards.
- Mutual assistance agreements are useful tools when jurisdictional issues get in the way of response time and assistance on reservations.
- Hire a good grant writer to stay on top of funding opportunities and programs.
- Rights-of-Way on tribal lands can cause jurisdictional issues for response agencies and police because records and documentation on land ownership and acquisitions are not always complete and are difficult to research and document.

Tribal Safety Issues Roundtable Discussion

Lowell Porter (WTSC), Marcia March (WSP), Kirk Vinish (Lummi), Cathy Cooper (WSDOT), Victoria Brinkley (FHWA)

- Organize a tribal safety issues workgroup that can tackle safety program and Rights-of-Way problems. Develop a safety program model to share with tribes. For example: Rights-of-Way research and documentation and comparing IRR Inventory information with crash data, etc.
 - As-built vs. ROW: Roads are not where they belong.
 - Lack of adequate ROW to make safety improvements and

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recommendations.

- Tribal data integration discussed. Tribes should use target zero money to standardize data:
 - Compare IRR Inventory to crashes and Rights-of-Way.
 - The WTSC's eTrip traffic reporting system can provide electronic input and transmittal of crash data, traffic violations and is moving forward on various fronts. It will be a system where tribes can access information and share crash data.
 - Sensitive cultural information a tribe doesn't want reported can be removed.
 - Tribal specific data analysis is available.
 - Each tribe should train an analyst on the best available data systems and encourage them to share data.
- Public Transportation vs. Roadway Design:
 - Reservation Roads are not designed for transit systems.
 - Need a study of IRR restrictions to transit implementation.
- Update the State's position statement on reauthorization:
 - Base funding for tribes - tribes with small budgets can't even participate in informational meetings and/or take advantage of programs that may be available.
 - Request a steady funding stream to support tribal administrative capacity building.
 - There is a need for a complete and comprehensive statewide inventory that is consistent with IRR program standards and integrates safety information and transit needs.
- Data: Fatal Accident Reporting System (FAR System) information is available from the WSDOT Traffic Data Office (TDO). If tribes will share a map of their reservation roads, TDO can set up electronic system retrieval of reported crash data.
- BIA Highways Safety Program Distribution Methodologies:
 - Safety money distributed from the Central Office to NHTSA Region 6 to the BIA (treated as a state) is not efficient. Tribes need to request a change for distribution of these monies directly to BIA regions.

- The Red Cross needs assistance with learning about tribes and conducting outreach. This became most evident to the Red Cross during the 2007 floods in Chehalis when they realized they had no relationship with area tribes.
- There are several areas on tribal lands in Washington State where disasters could occur including tsunami zones, potential flooding areas, etc. The Red Cross needs to develop tribal partnerships.
- Partnering with the Red Cross is open to all who want the training and Red Cross certification.
- The Red Cross is a good resource to provide disaster training to tribes. Training is free and not limited to emergency responses on the reservation. 23 people from the Kalispel Tribe are now trained and have responded to disasters all over NE Washington.
- When tribal members are trained, it is recommended to do outreach to local governments to share tribal safety and disaster studies and plans. However, tribes should be aware that local governments may want to change the language in these studies and plans.
- The Red Cross would like to have more reservation community members in Washington trained in disaster response and hopes to duplicate what was accomplished by the Kalispel Tribe.

Data

Geneva Hawkins (WSDOT), Marcia Marsh (WSP), Cathy Cooper (WSDOT), Brian Clark (Colville), Jeanne McMinds (WSDOT)

- Good data is one of the most important components when planning for safety programs or applying for grants. Without data you can't justify asking for funds. Tribes should be gearing up for the upcoming census too.
- Tribes may want to consider integrating IRR data with crash data.
- Research and complete ROW documents on tribal roads requires working with other agencies. Documentation is often weak or controversial.
- Tribes and WSDOT can share crash data now. Tribes can submit maps to WSDOT's Traffic Data Office and request statistics which is a good way to start building good data.
- The State Patrol has crash data that is used to deploy resources, but there is a lag time before some data is entered. There is a desire to work more closely with tribes to share accurate data.

Tribal Safety Partnership

William Petersen (Kalispel Tribe), John Zing (Red Cross), Jim Wynecoop (Kalispel Tribe)

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- The Grey Notebook (GNB) is the WSDOT accountability source and performance report. It connects the agency goals, strategic plan, and Governor's priorities. Tribes can access the GNB on the web to get quarterly updates on the status of projects, policies, and WSDOT's environmental issues.

Wednesday, October 29, 2008

Funding and Reauthorization SAFETEA-LU and Tribal Connections

Paul Parker (WTC), Lowell Porter (WTSC), Marty Loesch (Swinomish), Dillon Auyoung (WSDOT)

- Overall look for Climate Change initiatives in reauthorization and push towards:
 - Single vehicle households
 - Focus on public transportation and transit systems
 - Tolling to help pay for transportation
 - Less reliance on gasoline through efficiency and alternate fuel technology
 - Predicted that earmark project requests will need to include climate change strategies
- For tribes in particular, look to the NCAI/ITA white paper that is now available. The paper outlines the tribal position on reauthorization including requests for:
 - Department of Transportation to fill the Deputy Director position
 - \$50k to each tribe that will increase to \$150k through 2015
 - More money for the IRR program in general
 - More money for maintenance that addresses current needs and the backlog
 - More money for the IRR Bridge program

Reauthorization Discussion

- Panelists agreed that in the future there will be a focus on funding transit (both tribal local government programs) and the development of alternative technologies that provide less reliance on gasoline.
- There may be a push towards more tolling and studies that assess the feasibility of tolling.
- The Indian Reservation Roads program is severely under-funded for

new projects, maintenance, and the bridge program. All three areas need attention and funding.

- The National Congress of American Indians (NCAI) is pushing for more funding for tribal transportation programs. They are asking for 50k per tribe after IRR construction and planning money amounts are considered.
- The NCAI will ask that the Secretary of Transportation be allowed to enter into funding agreements through self-government contracts with tribes like other federal agencies.
- Tribal safety programs also need funding. There will be a focus on safety programs in general for reauthorization.
- The NCAI will also request an increase in funding for Tribal Technical Assistance Programs (TTAPs) nationwide.

WA State Tribes and the WSDOT State Transportation Improvement Process

Jim Longley (Nisqually), Karen Van Soest (NE WA RTP), Ed Conyers (WSDOT)

- Relationship building is the key to getting tribal involvement and input into regional transportation plans.
- Ranking and competition can be problematic. Overall tribes have had limited success in negotiating priority projects through RTPOs.
- Some tribes see participation in RTPOs as a threat to sovereignty. Tribal planners face challenges in coming up with benefits for tribal participation in a state RTPO process when they are accustomed to applying directly to a federal agency.
- A suggestion was made to re-organize standing RTPO/MPO committees to address disconnects in RTPO / MPO / tribal relationships.
- How NE WA RTPO plans to address disconnects: All parties need education about the purpose and requirements of both RTPOs and MPOs and their relationship with tribes. NE Washington RTPO plans to continue extending an open invitation to area tribes, and develop workbooks for RTPO members with educational information about tribes and project information that will be updated periodically.
- Federal earmarks to tribes need to be included in the statewide STIP.
- The state has directed tribes to participate with the RTPOs (and

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MPOs) if they wish to nominate a project to be placed on the STIP for federal aid funding.

- A long term goal of the state and tribes is to develop the Tribal/BIA TIPs with projects to be funded from the IRR program in coordination with the STIP projects with federal aid funding. There was real recognition of the need for this in years past, but it is now forgotten.
- The Tribal/BIA TIP (IRR funds) gets “stapled” to the back of the state-developed STIP that comprises federal aid projects from the State and MPOs. Federal Lands Department TIPS (Parks, Forest Service, Defense) are also stapled to the back with no consideration for coordinated planning and project selection.
- The state and MPOs are required to “consult” with tribes in the development of their long range transportation plans and to “consider” tribal projects during programming.
- The state of Washington has always directed the tribes to the RTPOs as the state’s way of fulfilling their responsibility to “consider” tribal projects during programming. However, there is no oversight of RTPOs to ensure that they are in fact including tribes and that the deliberation of tribal projects is done in a fair and equitable manner.
- The state has required tribes to participate in RTPOs for consideration of their projects. With the exception of the formation of the TTPO, the state has provided no resources to support tribal planning and tribal participation in this state process.
- For a number of years, WSDOT put forth proposals to the legislature to support tribal planning and tribal participation in state transportation planning processes. The state has not resubmitted this proposal since WSDOT became a cabinet agency. Base funding of \$50,000 from the state to each tribe for this purpose would go a long way toward meeting the requirements for inclusion of tribes in planning and programming.
- It was noted that in the past WSDOT strongly supported training to WSDOT employees and others in Government-to-Government Relations. The discussion during the conference regarding relations between Tribes, MPOs and RTPOs documents the continuing need for this training.

Gas tax

Kelly Croman (Marine View Ventures, Inc), Jim Longley (Nisqually)

- 10 tribes now have fuel compacts with the state. Tribes without fuel stations can plan for future development and should compact now.
- Department of Licensing (DOL) has been granted authority by the Governor to enter into fuel compacts with tribes.
- 2 fuel tax compact models are in use: the Allocation model and the Per/gal model.
- Compacts have no renewal date, in perpetuity.
- The third party dispute resolution process is critical in a fuel tax compact, so plan for it and be prepared.
- 75-25% split is standard and used by Department of Licensing who has the governor’s authority to compact with Tribes.
- Tribes have to spend tax on transportation purposes.
- Tribes can also spend money now and then can get credits for the next 10 years.
- Compacts allow tribes to buy fuel only from state-owned businesses though they can negotiate to buy from tribal-owned as well.
- Don’t get caught with a single source of revenue for transportation projects. Tribes have bonding flexibility to finance now for future taxes collected.
- There are now added provisions to fund law enforcement too and this should be considered in your compact if you have the need.

Climate Change

Katy Taylor (WSDOT), Daryl Williams (Tulalip Tribes), Keith Cotton (WSDOT), Ed Knight (Swinomish)



- The Transportation Implementation Working Group (IWG), formed under the Governor’s Climate Action Team, recently completed a list of recommendations to for the legislature on how Washington

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State can make decisions on funding and to generate revenue that support climate change solutions. Final recommendation highlights include a focus on: transit, ride-sharing, commuter options, transit-oriented development, and transportation pricing.

- For tribes, the assessment of potential impacts and risk to reservation lands because of weather and climate influences, with action plans is an important starting point.
- More bike-pedestrian projects are needed which can be incorporated in the development of tribal transit systems.
- Tribes can focus on lowering auto emissions, providing communities with more efficient wood burning stoves and relocating of homes out of areas adversely affected by weather events.

Tribal Transit Programs Session & Safety Policy Development Roundtable

Teri Johnson-Davis (Yakama), Kirk Vinish (Lummi), Katy Taylor (WSDOT), Brian Clark (Colville), Felipe Gonzales (Kalispel), Tom Hansen (WSDOT)



- Tribal roads are not designed or ready for today's transit systems. There are very few bike trails or pedestrian paths and pedestrian safety at bus stops is a concern.
- There is an overall need to develop signage, signals and intersections for both transit and safety.
- Try to develop a new transit system on the reservation in coordination with upgrading roads for bike and pedestrian use.
- Developing fixed routes vs. non-fixed routes really depends on ridership. Systems can develop from non-fixed to fixed routes when passengers increase. Communication to the public is the key to success.
- Reauthorization efforts have begun so now is the time to request more support and increase tribal transportation capacity in all programs including transit. Tribes should also request increased funding for IRR.
- Tribes should recommend a new distribution formula and process

for 402 safety monies. Funding should be distributed directly to NHTSA regions to serve tribes instead of routing all money through region 6.

- Ask for help with training for all areas of transit. Organizations like the Community Transit Association of America (CTAA), WSDOT, and FTA provide very good training.
- Design transit brochures, advertising, and announcements around the population served. For example, Yakama Nation's People For People route has all materials translated into both Spanish and the tribal language-Sahaptin.

Wrap-up Session

A focus on the reauthorization of SAFETEA-LU was the theme for tribal planners at the wrap up session of the Tribal/State Transportation conference held the week of October 27-30, 2008. Participants in the tribal planning track agreed that the most pressing issue for tribal transportation and the issue that affects all tribal transportation and transit programs is the reauthorization of this law. The current federal surface transportation law, SAFETEA-LU, directing federal surface transportation policies and programs will expire September 30, 2009.

The Tribal Transportation Planning Organization (TTPO) will ensure that these concerns are heard and incorporated into existing reauthorization efforts by key national and regional tribal organizations with leadership roles in reauthorization. The TTPO will also lead the effort to share tribal transportation concerns with WSDOT and collaborate as the state plans for a role in the reauthorization process and for the upcoming state legislative session.

Planning track participants identified two major areas in SAFETEA-LU where NW tribes would benefit if the following changes and additions were made in the next version of the surface transportation law. For clarity they are grouped under "IRR Inventory", "Funding Streams and New Programs", and "Continued Collaboration". In addition to reauthorization, opportunities that strengthen collaboration between WSDOT and tribes are identified under "Continued Collaboration".

IRR Inventory Recommendations

1. Direct Federal Lands Highways Office of Asset Management to

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perform a comprehensive inventory of all transportation facilities on reservations.

2. Adopt a revised IRR formula
 - Ensure equal distribution of IRR funding between regions
 - Use the "Cost more" formula model
3. Tribes need data from WSDOT on Cost to Construct (CTC) and reliable access to the information for the IRR Inventory:
 - Need to be able to interpret and add state bid tab data for use in IRR formula
 - Need to work with BIA to ensure that WSDOT bid tab data is incorporated
4. Request that BIA adhere to timelines laid out in the law.
5. IRR Inventory formula variables:
 - Restate the support of Washington Tribes for counting all state and county roads in IRR Inventory
 - Count state/federal highways at the federal rate (13% in WA), (not a unanimous position on this)
 - Count all county roads at 100% (unanimous support for this)
6. In reauthorization, clearly identify and dedicate preservation and maintenance funding for both highways and bridges that won't lower the funds available to Washington tribes for construction projects.
7. Move the official IRR Inventory from BIA to Federal Lands Office of Asset Management.
8. Request that BIA regions have dedicated staff for IRR now. BIA is so severely understaffed and this has caused inconsistency in IRR program delivery.
9. Request more money for Indian Reservation Roads for construction, maintenance, and IRR Program administration. Many of these problems with the Inventory and BIA can be addressed if the severely under-funded status of the program is reversed.

Action Items

- Create an IRR formula workgroup to help solidify the position of tribes in Washington and work on requested IRR Inventory formula changes.
 - Kirk Vinish, Brian Clark, Liz Mares, Lynn Drake, Jim Longley, Kim Stube, Keri Shepherd volunteered for the IRR Formula workgroup. Kirk will hold the 1st phone conference in

November 2008 and will send out an email invite.

- Add the IRR Inventory Formula discussion and a discussion on all recommendations to the next TTPO agenda (January 2009). Megan Nicodemus will add to the agenda.

Funding Streams & New Program Recommendations

1. Increase funds and propose a more efficient 402 Safety funding distribution methodology. Funds are distributed from Region 6 (Southern Midwest) because all Indian Nation programs at NHTSA are assigned to Region 6 rather than the NHTSA regions where tribes are located.
2. Strengthen Tribal/State Coordination on reauthorization:
 - Establish a consortium and obtain funding for a consortium
 - Consortia should receive all federal funding for support of the full costs to develop and maintain the consortia. It should not be set up as a formula.
3. Support the NCAI proposal to fund tribal capacity at \$50K per year per tribe.
4. Streamline the process for Certification Acceptance (CA) which is the certification of professional engineer on staff requirement for funding programs.
5. Request continued funding for start-up transit projects with a portion of competitive funds set aside in a non-competitive bucket to fund start-ups only.
6. Request funds for tribal transportation communication equipment compatibility.
7. Develop a list of "best practices for tribal transit".
8. Request dedicated funding for the Tribal Transportation Planning Organization for full costs of operation.
9. Overall tribes in Washington aspire to speaking with one voice on reauthorization.
10. Write a letter to all tribal council chairs in Washington with a reauthorization position and ask for the support of their tribal governments.

Action Items

- TTPO Officers will draft a letter to tribal council chairs and WSDOT Secretary of Transportation outlining these recommendations. After the IRR Inventory formula workgroup has come up with

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options, the first draft will be sent for review by those who participated in this exercise. The letter will be finalized at the January 2009 TTPO meeting. Megan Nicodemus will add this to the January TTPO agenda.

- TTPO to consider tribal transit best practices list at January TTPO meeting (Tribal Transportation Planning Guidebook, FTA Manuals), Megan Nicodemus will add to the agenda.

Continued Collaboration

Participants also identified other areas that will strengthen collaboration with WSDOT and WTSC.

1. WSDOT should begin planning for next Tribal/State Conference now by organizing a planning group to begin looking for a venue.
2. eTrip/WTSC should investigate funding and availability for all tribes to use.
3. Incorporate bike-pedestrian paths as climate change initiatives into transit plans and transit-oriented development.

Action Items

Megan Nicodemus will forward these "Continued Collaboration" requests to Acting Headquarters Tribal Liaison, Megan Beeby, Lynn Drake at the WTSC, and Cathy Silins for follow-up.



Cultural Resources Track Conference Report / Session Notes

Co-chairs: Camille Pleasants (Colville), Scott Williams (WSDOT)

Track Discussion Summary

Tuesday, October 28, 2008

WSDOT/FHWA Statewide Section 106 Programmatic Agreement (PA) Trent de Boer (WSDOT Archaeologist), Sharon Love (FHWA Environmental Manager), Matthew Sterner (DAHP Transportation Archaeologist).

Discussion following presentation:

- What level is the PA? Who is involved?
- Discussion of who signed the PA. Tribes did not sign as concurring parties.
- Description of various agreement types and how some are more binding than others.
- The statewide PA is agency-to-agency, and just covers Section 106.
- Various agency responsibilities can be confusing.
- The PA only applies to FHWA projects.
- General explanation of relationship between FHWA and WSDOT.
- Discussion of US 12 Wallula to Walla Walla project and various laws and regulations.
- Clarification of DAHP's position that Section 106 compliance is the most comprehensive and fulfills other requirements (such as the Governor's Executive Order 05-05).
- Concerns expressed about private development where federal agencies are brought in late.
- FHWA won't exempt anyone from Sec. 106. They will require the developer to go back and fulfill responsibilities.
- It can be difficult to figure out whom to consult with.
- Tribal consultation on PA was informal; formal comments were not requested at meetings.
- Letters were sent requesting formal comments but the work sessions were informal.
- Does ODOT have a PA? Yes, and a new one is being drafted.
- Description of WSDOT's Northwest Region's PA consultation on exempted projects: holds face-to-face annual review meetings and sends a pdf of exemption memos if requested.
- Is an exemption memo like a NEPA Categorical Exclusion? Yes. And it must be rewritten if the project changes.
- Back to issue of Sec. 106 process fulfilling other laws/regulations:

the H&LP process is different. Local agencies apply for federal funds but might not get them. Therefore they start out going through GEO 05-05 which is later adopted as Sec. 106 if funding is received. H&LP also can't make an annual list of anticipated exemptions because they may not know what projects the locals are planning.

- EO 05-05 requires consultation with tribes, but some projects erroneously think it only requires consultation with DAHP.
- Confirms that EO 05-05 documentation is supposed to go to tribes.
- Who sees exempted projects? Who reviews? WSDOT Cultural Resources Specialists review them, and often write a memo.

Holistic Approach to Cultural Resources, Roundtable Discussion Facilitated by Scott Williams (WSDOT Cultural Resources Program Manager).

- Larry Ross - Squaxin Island Cultural Resources: Explains that he used to work for WSDOT and understands their perspective, but now works for the tribe. WSDOT should understand that for the tribes, everything is personal because of how tight and personally related many of the staff are to the community. CR staff should make compliance personal. They should meet tribal representatives, develop relationships, and understand where to get information. Everything is spiritual for the tribe, and business issues may come second. The tribe is the expert on its culture.
- Johnson Meninick - Yakama Nation Cultural Resources: Roads were ancestral travel routes, then engineers straightened them and built through sacred sites. Tribes evaluate sites differently, and want protection for TCPs. Those who don't protect TCPs are at personal/spiritual risk. The tribe uses cultural specialists alongside archaeologists. Cultural specialists live their traditional ways and don't do the work just for a paycheck. "Cultural resources don't belong to us, we belong to cultural resources. We protect sites." The tribe advocates preservation, protection, and perpetuation. Sites are living things that change through time and should be revisited.
- It's important for WSDOT to understand that when working with tribes, multiple tribal cultures may be involved and that tribal offices have heavy workloads.
- The Yakama don't normally sign agreements but will sometimes

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sign MOUs.

- The Cultural Resources Department is an arm of the tribal government and not a commercial entity. WSDOT should set aside 15-20% of each project's budget to pay tribes for their consultation expenses.
- Camille Pleasants - Colville THPO: When dealing with multiple tribes, understand that tribes will work together. Archaeologists should get to know tribal staff and familiarize themselves with the work they've done. WSDOT archaeologists should do background research and not just ask tribes about TCPs.
- Tribes can perform cultural resources work. They know more about TCPs and could better incorporate them into the discipline report. Tribes also abide by the laws and regulations. Things have improved between tribes and WSDOT over the years. Some individuals have developed relationships and care, rather than just drawing a paycheck. Individual relationships are key to the holistic approach.
- Ken Juell - WSDOT Cultural Resources Specialist: WSDOT is staffed up, and WSDOT archaeologists have an interest in and appreciation for native cultures. They want to do the right thing and are looking for ways to take others' perspectives into account. He provided the example of the SR 164 project on the Muckleshoot reservation.

WSDOT's UDP Template Barbara Bundy (WSDOT Archaeologist)

*note: Guy Tasa - DAHP Physical Anthropologist - was supposed to present on the Burial Bill, but was ill and unable to attend.

- Barbara described the updates to the Unanticipated Discovery Plan to be in compliance with the new Human Remains legislation. The new template is also easier to use.

Discussion after presentation:

- Johnson Meninick referenced several recent projects with human remains. Notes that NAGPRA may introduce unnecessary delay.
- The tribes should be party to determinations of ethnicity, and not just notified afterwards.
- Remains belong in the ground, not scattered around or in labs. Ceremonies may be necessary. Respect and honor are the most important thing.

Wednesday, October 29, 2008

Presentation on Traditional Cultural Properties and the SR 240 Beloit to Kingsgate Project Dean Weaver (WSDOT Archaeologist), Guy Moura (Colville, TCP Coordinator)

Description of project and TCP consultation.

- How would this have been handled if the TCP wasn't already recorded? Through ethnographic research during scoping.
- DAHP doesn't have all TCPs on file. Yakama's Culture Committee keeps lists of sites/places. Bulletin 38 doesn't go far enough. WSDOT should sit down with tribes and talk about issues. Sometimes archaeological methods aren't appropriate. You can't learn about TCPs in school because ethnographic sources aren't always accurate. Informants didn't always speak English or didn't feel comfortable talking about TCPs. Tribal members are the only ones who know where TCPs are.
- Should we be checking published sources and then go to the tribe for correction? Yes.
- Guy Moura provided an introduction to TCPs from Colville perspective.
- Archaeologists don't always know very much.
- Historical view: In the pre-treaty days, tribal territories were understood (where various communities lived, fished, gathered; what villages they were associated with). Written treaty rights are a product of the last several hundred years.
- The tribe's history and archaeology program is an aspect of representing sovereignty.
- TCPs aren't really represented in the NHPA. When Bulletin 38 was issued, no new criteria were included. Confusion remains over how TCPs fit with the NHPA. Some think only determined-eligible properties can be called TCPs.
- The Colville TCP program is oriented towards the National Register.
- The Colville CR program expects materials they receive to reflect existing public information, and show knowledge of ethnographic information. In other words, to use the holistic approach.
- When the program does evaluations in-house, after the background research step they do oral histories ("documentation"), because published sources aren't the full story. Then the next step is

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inventory and evaluation. The only people who can evaluate a TCP are the affected community.

- There are many different possible ways to mitigate effects to a TCP: education, language programs, etc.
- The Colville CR program's protocol for reviewing reports is to either accept them if adequate or recommend additional research.
- The CCT's traditional territory covers 20 million acres, and includes 12 different tribes. One CR office can't be expected to represent all interests or have all knowledge.
- It's inappropriate to call a site a "camp site." It should be a home site.
- There needs to be a format for TCPs. Tribal traditions are oral history. There are translation errors and informants were not always candid with interviewers.
- We need to slow down, talk things over, and analyze. WSDOT SWR should visit Yakama.

Traditional Cultural Properties, Roundtable Discussion (Facilitated by Scott Williams (WSDOT)).

What is a TCP?

- Archaeologists don't look at resources the same way tribes do, they lack the tribal connection. Tribes don't see ancient vanished people. They have a connection to their ancestors that they're passing on to their children. It's critical to understand where tribal people come from. It's not about scientists learning things for their own benefit; it's about keeping the culture alive.
- Comments on Bulletin 38. There are five aspects of TCPs: Legendary (which is sacred and not shared); Ancestral Use (which includes the connection of all life, harvest areas, home sites); Cultural values today; Academics (which fictionalizes traditional knowledge); and Liability.
- In-depth knowledge requires formal consultation with the affected party. The tribe may not give all the details but will tell you how to protect the area. The right-of-way on the reservation is actually an easement because it was taken. Don't use mitigation, use restoration.

Do we need to make more effort to look for TCPs?

- Yes. There should be a specific process. And the idea that there can

be no TCPs in a disturbed area is a reversal of the NHPA process: you identify first, then evaluate. Tribal representatives should look at www.falsepromises.com. The tribe expects agency CR people to be familiar with published sources.

- Tribes don't necessarily know where every TCP is without looking into it. Some things have been lost, and sometimes families don't want to share their information.
- What about level of effort, and various sizes of projects?
- Sometimes the tribe decides the best thing is to keep quiet, especially if there are no plans to disturb the area. There are privacy, publicity, and natural resource issues. Information may get out onto the internet. WSDOT needs to know that tribes are tired of empty words; it's about keeping the culture alive. Years ago no one outside the tribes knew about culturally modified trees. Tribes are doing a balancing act between protection and privacy.
- The issue is very confusing because the NRHP criteria don't fit very well. Who makes the determinations?
- It isn't possible to make a determination unless criteria "a" and "b" are considered with the tribe.
- The tribe can give "no entry" to areas that flag sensitive locations.
- Mr. Dick requested a copy of Dean Weaver's presentation. Described his personal family connection to this area. This whole watershed is a TCP. Described examples of the tribe being cut out of decisions about burial areas. WSDOT needs to see where the tribe is coming from, "put yourself in our place", to help arrive at a solution.
- WSDOT is a good agency that tries to back up what they say. Agencies think tribes have money, but they don't. WSDOT should pay tribes on larger projects to do TCP studies. The tribes need help to respond to requests from dozens of agencies. Agencies should set aside money.
- Tribes find agencies' level of effort frustrating. TCPs should be identified just like archaeological sites. No project is too small to do a TCP study.
- WSDOT should walk in the tribes' shoes, get an understanding of where the tribe is coming from, and look from different points of view. People on the west side of the state don't understand reservations.
- Anthropologists should be schooled in the holistic approach. Collecting information is part of doing it right. We should all be on

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the same page by now on what TCPs are. The crux of the problem is the regulatory environment. But think beyond Section 106; we can use NEPA and write provisions into the NEPA documentation.

- More projects are doing oral history studies. How does this need to be incorporated into project scoping? Are the annual meetings a good place?
- WSDOT wants to keep the process as open and transparent as possible.
- Relationships between tribal staff and agency staff are important.
- When can we expect consistency across the regions? Also, agencies should understand reservation laws and policies. Where can tribes go if they see inconsistency between regions?
 - The region's Environmental Manager is a good place to take those concerns. The WSDOT Tribal Liaison can also help as well as identify the other appropriate people to work with.
 - WSDOT is also trying to address consistency in tribal consultation through training.
- Sometimes it seems that NEPA is just a process of jumping through hoops, then even if there are concerns the project just goes ahead. There should be an actual dialogue. The tribe doesn't want to be forced to just compromise or "get on board" if they don't agree with the project.
- WSDOT is a huge agency, and some projects have competing interests. It's important for the tribes to consult as early as possible. The earlier in the process issues are identified, the better opportunity they have to be addressed. If the tribe doesn't approve of an entire new route, it's important for them to be involved and identify concerns in the long-range planning process.
- Projects need to be responsive to tribal concerns. We won't always agree on outcomes, but projects need to be responsive to tribal concerns.
- Tribal involvement in Port Angeles was costly. In the planning phase, tribes should be paid.
- It's important for tribes to understand that WSDOT projects are developed in response to transportation problems/needs. In the past, solutions weren't creative. Work out what the problems are so the agencies aren't so invested in a particular solution.
- Small tribes should reach out and build relationships.
- Johnson Meninick wants a long list of WSDOT projects, status

updates, and help understanding which projects need priority within the reservation, ceded lands, and the U&A area.

Action Items

- Scott Williams, WSDOT Cultural Resources Manager will meet with tribal THPOs and Cultural Resource Managers Spring/Summer 2009 to build relationships and understanding.
- WSDOT / FHWA to host tribal meeting on Section 4f to increase awareness and understanding of how this affects project decisions.
- Work with Nancy Boyd to train WSDOT engineers in regions on importance of cultural resource work and traditional cultural properties. Tribes will be invited to participate in this in their regions of interest.
- When financially possible, hire a tribal cultural anthropologist in the cultural resources office to help with oral history studies, TCPs etc. Until then, continue and enhance relationships between WSDOT Tribal Liaisons and the Cultural Resource Office.
- Tribes will map traditional cultural areas to help guide agencies.
- WSDOT to communicate tribal issues regarding transportation projects to consultants working on WSDOT projects.

Tribal Conference Attendees List

Auyoung, Dillon	WSDOT - Government Relations Office	Gonzales, Felipe	Kalispel Tribe
Barg, Diana	Samish Indian Nation	Hammond, Paula	WSDOT - Secretary
Bastian, John	Quinault Indian Nation	Hanft, Stacie	Puyallup Tribe
Beeby, Megan	WSDOT - Government Relations Office	Hanson, Tom	WSDOT - North Central Region
Belmont, Claton	WSDOT - North Central Region	Hawkins, Geneva	WSDOT - Transportation Data Office
Bill, Craig	Governor's Office of Indian Affairs	Herman, Nicole	Samish Indian Nation
Bird, Chamisa	Spokane Tribe & Eastern Washington University	Hicks, Elissa	WSDOT - Government Relations Office
Bjordahl, Mike	WSDOT - North Central Region	Honsinger, Dave	WSDOT - North Central Region
Boyd, Nancy	WSDOT - Design Office	Huff, John	WSDOT - Office of Equal Opportunity
Brinkly, Tori	Federal Highways Administration - Western Federal Lands	Hunt, Sam	WA St House of Representatives
Bundy, Barbara	WSDOT- Cultural Resources Office	Jenkins, Marvin	WSDOT - Office of Equal Opportunity
Burlingame, Dave	Cowlitz Indian Tribe	Johnson-Davis, Teri	Yakama Nation
Burns, Gary	Shoalwater Bay Indian Tribe	Jones, Dave	WSDOT - Construction Office
Cardwell, Michael	Tulalip Tribes	Jones, Robert	WSDOT - Olympic Region
Cheeka, Cecil	Iron Workers Local #86	Jordan, Rick	WSDOT - Eastern Region
Chidley, Michael	WSDOT - Northwest Region	Joseph Jr., Andy	Conf Tribes of the Colville
Clark, Brian	Colville Tribe	Juell, Ken	WSDOT - Urban Corridors Office
Coffey, Stephanie	NW WA Indian Health Board	Keniston, Rick	WSDOT- Southwest Region
Compton, Jerry	WSDOT - Eastern Region	Knight, Ed	Swinomish Tribe
Conyers, Ed	WSDOT - Northwest Region	Laird, Linea	WSDOT - Construction Office
Cooper, Cathy	WSDOT - Traffic Office	Leiste, Willy	WSDOT - Government Relations Office
Corbett, Jerri	Puyallup Tribe	Lenzi, Jerry	WSDOT - Assistant Secretary of Engineering and Operations
Cotton, Keith	WSDOT - Public Transportation Office	Loescher, Marty	Swinomish Tribe
Cox, Mike	WSDOT - North Central Region	Longley, Jim	Nisqually Tribe
Croman, Kelly	Puyallup Tribe	Love, Sharon	Federal Highways Administration - WA Division
Cronemeyer, Cinco	Bureau of Indian Affairs, DOT	Mares, Elizabeth	Yakama Nation
Dayton, Kevin	WSDOT - Olympic Region	Marsh, Marcia	Washington State Patrol
deBoer, Trent	WSDOT - Cultural Resources Office	Martin, Keith	WSDOT - Eastern Region
Dick, Jr., Mathew	Conf Tribes of the Colville	Mathews, Rick	Womer and Associates, Inc.
Dick, Sr., William	Conf Tribes of the Colville	Mathis, Dan	Federal Highways Administration - WA Division
Drake, Lynn	Washington Traffic Safety Comm	McClelland, Robin	Puget Sound Regional Council
Dunithan, Deb	Shoalwater Bay Indian Tribe	McMinds, Jeanne	WSDOT- Project Control
Dunn, John	WSDOT - Traffic Data Office	Meninick, Johnson	Yakama Nation
Dye, Dave	WSDOT - Deputy Secretary	Metcalf, Keith	WSDOT - Eastern Region
Ernst, David	Spokane Tribe	Moore, Casey	Eastern Washington University
Estrada, Patricia	Yakama Nation Tribal Employment Rights Office	Morton, Becky	Cowlitz Indian Tribe
Foster, Rhonda	Squaxin Island Tribe	Moura, Guy	Conf Tribes of the Colville
Gleason, Glenda	Colville Confederated Tribes	Narte, Philip	WSDOT - Ferries Division

Tribal Conference Attendees List

Nelson, Charlene	Shoalwater Bay Indian Tribe	Tisdale, Tara	Swinomish Tribe
Nichols, Melinda	WA State Apprenticeship Council	Turner, Mary	Oregon Department of Trans
Nicodemus, Megan	WSDOT - Eastern Region	Turrey, Joseph	Lower Elwha
Paananen, Terry	WHPacific	Valdez, Kate	Yakama Nation
Packineau, Kelcey	Yakama Nation TERO	Van Soest, Karen	Tri County Economic Devel.
Parker, Paul	WA St Transportation Comm	Vinish, Kirk	Lummi Nation
Peterson, William	Kalispel Tribe	Wagner, Don	WSDOT - Southwest Region
Piengkham, Betty Jo	Kalispel Tribe	Washington, Tom	WSDOT - North Central Region
Pierre, Dannee	Colville Tribe	Weaver, Dean	WSDOT - Eastern Region
Pleasants, Camille	Conf Tribes of the Colville	Wetmore, Anne	US Dept of Labor
Porter, Lowell	Washington Traffic Safety Comm	Whitehouse, Don	WSDOT - South Central Region
Pouley, Cheryl	Conf Tribes of the Colville	Williams, Daryl	Kalispel Tribe
Queahpama, Allie	Yakama Nation	Williams, Scott	WSDOT - Environmental Services Office
Ramos, Bill	Federal Transit Administration	Williams, William	Tulalip Tribal Police
Reinmuth, Steve	WSDOT - Chief of Staff	Winchell, Dick	Eastern Washington University
Ring, Jennene	WSDOT - Project Control and Reporting Office	Wollwage, Lance	Department of Archeology and Historic Preser- vation
Rodwell, Julie	WSDOT - Strategic Planning Office		
Rohwer, Mark	WSDOT - Eastern Region	Womer, William	Womer and Associates, Inc.
Rolland, Richard	Northwest Tribal Technical Assistance Program	Wynecoop, Jim	Kalispel Tribe
Ross, Larry	Squaxin Island Tribe	Zing, John	American Red Cross
Ruth, Kerry	WSDOT - Northwest Region		
Sarles, Dan	WSDOT - North Central Region		
Scott, Charles	Jones & Jones		
Sexton, Gracie	People For People		
Seymour, Virgil	Conf Tribes of the Colville		
Sheldon, Theresa	Tulalip Tribes		
Shepherd, Keri	Lummi Nation		
Shipe, Steve	WSDOT - Northwest Region		
Siedenburg, Michele	Northwest TTAP		
Silins, Cathy	WSDOT - Public Transportation Office		
Sterner, Matthew	Department of Archeology and Historic Preser- vation		
Stevens, Casey	Stillaguamish Tribe		
Stocks, Ken	Kalispel Tribe		
Stone, Ken	WSDOT - Environmental Services Office		
Stube, Kim	Cowlitz Indian Tribe		
Swanaset, Elizabeth	Nooksack Tribe		
Tanner, Tom	Iron Workers Dist Council PNW		
Taylor, Katy	WSDOT - Public Transportation Office		

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